

24. After a decade or more of physical decline and financial strife, the Congress and the Interstate Commerce Commission finally responded to the changed economic conditions and competitive realities. Those regulatory reforms have revitalized the rail industry, brought down rail rates in real terms,²⁸ restored the industry's financial health, induced substantial investment in network upgrades, stimulated rapid technological innovation and deployment, and shifted large volumes of truck traffic off the highways and on to far more efficient intermodal trains.²⁹ Shipper surveys reveal that most customers are delighted with their newfound freedom to bargain, negotiate and contract for services, and with the significant and continuing improvements in rail service quality.³⁰

to abandon low density branch lines, no matter how much money it was losing on the service. See Robert G. Harris, "Economic Analysis of Light Density Rail Lines," The Logistics and Transportation Review, 16(1), Winter 1980.

²⁸ Most importantly, the regulatory reforms of 1980 effectively deregulated rail rates wherever the railroad does not have "market dominance." Having finally been freed from onerous regulations, rail carriers have won back a substantial share of the traffic that they never should have lost to motor carriers in the first place, had regulation allowed fair competition. Today, the fastest growing class of rail service is intermodal -- trailers and containers moving on the line-haul portion by rail, with local pickup and delivery by truck. The shift to intermodal has dramatically reduced transportation costs to shippers, and also reduced energy consumption and highway congestion. See Mitchell E. MacDonald, "Rails Climb Back into the Ring," TRAFFIC MANAGEMENT, December 1993, p. 43.

²⁹ See Clifford Winston, Thomas M. Corsi, Curtis M. Grimm, and Carol A. Evans, The Economic Effects of Surface Freight Deregulation Brookings, Washington, D.C., 1990. These authors have conducted the most comprehensive study of the effects of both rail and truck deregulation, employing a counterfactual methodology. According to this source, the railroads reaped cost savings of over \$3 billion dollars due to deregulation (pp. 15-41).

From 1971-1980, railroad return on equity averaged less than 3%. By 1979, almost one-fourth of Class I rail mileage was in bankruptcy. Since passage of the Staggers Act, not one major railroad has gone bankrupt and the financial condition of the industry has improved dramatically. See MacDonald, pp. 40-41.

In addition, according to the Interstate Commerce Commission, ROE for Class I railroads in 1993 was 9.38%. See "Class I Railroad Financial Data," ICC, Office of Economic and Environmental Analysis, May 1994.

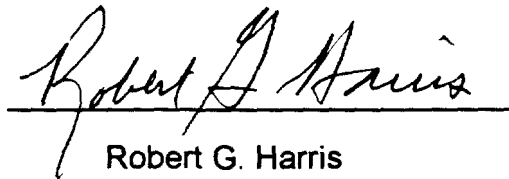
³⁰ See Curtis M. Grimm and Ken G. Smith "The Impact of Rail Regulatory Reform on Rates, Service Quality, and Management Performance: A Shipper Perspective," LOGISTICS AND TRANSPORTATION REVIEW vol. 22, No. 1, 1986, pp. 57-68. Shippers rated rail rates and service quality in terms of speed of service, reliability, loss and damage and car supply significantly higher in the Post-Staggers period as compared to Pre-Staggers. Also, according to the Winston, et al study cited above, p. 28, shippers have received economic benefits from rail deregulation of more than \$6 billion dollars annually (1988 dollars), driven by improvement in service quality.

25. The parallels between the regulation of railroads and local exchange carriers provide some important lessons for telecommunications policies and price cap reforms. First, the myth of monopoly pervaded the rail industry long after the demise of their monopoly power, just as it apparently is in the case of local exchange carriers. Second, the competitors of railroads played a major role in sustaining regulatory policies long after they had become counter-productive because those policies were a crucial source of competitive advantage for motor carriers, just as LEC competitors now seek to retain policies that inhibit LECs from meeting them fairly in the marketplace. Third, the structure of rail rates, incorporating rate averaging, fully distributed costs and cross-subsidies, was not sustainable in a competitive environment, just as the current structure of telephone prices are not. Fourth, while regulators based their policies on intramodal competition, the most powerful market forces were intermodal competition, just as it is likely to be in telecommunications, as telcos, cable operators, cellular carriers, satellite systems and other modes of communications compete to meet customers needs.

26. The vital lesson from the surface freight experience is that the more competition develops between two industries, the more important it is that regulations enable both industries to compete effectively. The worst possible results are caused by regulations that give artificial advantages to one industry over the other. In surface freight transportation, those regulatory advantages were heavily biased in favor of motor carriers. Market forces will feed off those artificial advantages: it did not matter that the cost of rail service for a given shipper was lower than the cost of truck service, if the rail carrier had to charge a higher price. It did not matter to a shipper that rail was a more efficient means of transport than truck if the rail carrier was prevented from realizing those potential efficiencies. The regulatory reforms of 1980 have restored competition balance between rail and motor carriers. Not surprisingly, both industries are more efficient, offer lower prices and better service, and are financially healthy.

27. The cautionary lesson of that experience -- and similar experiences in financial services and energy regulation -- is that this Commission should adopt policies that promote balanced competition between cable and LECs. Both industries should receive comparable treatment in the implementation of price caps on regulated services. Both industries should be given comparable flexibility to price all but their basic services to meet economic demand. Both industries should be given similar incentives to become more efficient, to develop and deploy innovative technologies and to invest in the National Information Infrastructure. Both industries should be encouraged to develop and offer new services, in competition with each other and with other providers of communications services and products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 29th day of June, 1994.


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EDUCATION

Ph.D., M.A., UNIVERSITY OF CALIFORNIA, Economics, Berkeley, 1973-77.
Fields of Emphasis: Industrial Organization, Antitrust, Regulation, Public Finance.

M.A., B.A., MICHIGAN STATE UNIVERSITY, Social Science, 1961-65, 1972-73.

PRESENT POSITION

WALTER A. HAAS SCHOOL OF BUSINESS, UNIVERSITY OF CALIFORNIA,
Berkeley, CA, 1977 - present.

Associate Professor and Chair, Business & Public Policy Group.

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ADMINISTRATIVE POSITIONS, UNIVERSITY OF CALIFORNIA

WALTER A. HAAS SCHOOL OF BUSINESS

Chair, Business and Public Policy Group (1983-84, 1986-).
Policy and Planning Committee (1986-88; 1991-93); Chair (1987-88; 1992-93).
Chair, Program in Business and Social Policy (1986-90).
Business School Building Program Committee (1986-91).
Ph.D. Field Advisor, Business and Public Policy (1981-87; 1989-91).
Policy and Planning Committee (1991-3; Chair, 1992-93).
Member, Board of Directors, Washington Campus Program (1990-).
Director, The Executive Program (1983-85).
Director, Executive Programs in Telecommunications (1989-).
Chair, Executive Education Task Force (1991-3).

UNIVERSITY OF CALIFORNIA, BERKELEY

Executive Committee, Center for Research in Management (1989-).
Advisory Board, Lester Center for Innovation and Entrepreneurship (1992-).

Chancellor's Advisory Committee on Parking (1988-89).
Executive Committee, National Financial Services Center (1986-88).
Executive Committee, Institute of Transportation Studies (1981-83).
Director, Center for Transportation Policy Research (1980-2).

UNIVERSITY OF CALIFORNIA, SYSTEMWIDE

Working Group on Technology Transfer (1988-90).
Task Force on Telecommunications and Information Policy Research (1984-85).

ACADEMIC HONORS AND AWARDS

Charles C. Slater Memorial Award (outstanding contribution), *Journal of Macromarketing*, 1983-86.
Schwabacher Prize (outstanding University service), 1983.
Phi Beta Kappa, 1977.
Alfred P. Sloan Dissertation Fellowship, 1975-77.
Blue Key and Excalibur Honorary Fraternities, 1964-65.
President, All-University Student Government, 1964-65.

TEACHING

Graduate Courses: Business and Public Policy (MBA Core Course), Competitive Strategies & Public Policies in Telecommunications, Microeconomic Analysis for Managerial Decisions, Industry Analysis and Competitive Strategy, Doctoral Research in Business & Public Policy, Antitrust Law (School of Law, with L. Sullivan), Antitrust Economics (Department of Economics).

Undergraduate Courses: Social and Political Environment of Business (Core Course), Economics of Regulated Industries.

Executive Education: Competitive Strategy, Telecommunications Policy and Strategy, Public Policy Strategy, Managing Business-Government Relations.

PUBLICATIONS

"Competitive Implications of Vertical Relations between Equipment Vendors and Telecommunications Services: Lessons from the French Experience," with Joanne Oxley, presented to European Regional Conference of the International Telecommunications Society, Stenungsbaden, Sweden, June 21, 1993; forthcoming in *Conference Proceedings*.

"Obtaining Competitive Intelligence and Creating Competitive Advantage through the Public Policy Process," with Steven Harris, invited paper, Annual Conference of the Society for Competitive Intelligence Professionals, Los Angeles, April 2, 1993; forthcoming in *Competitive Intelligence Review*.

"Deployment and Adoption of Integrated Services Digital Network in the U.S.: Progress and Public Policy Obstacles," with Luis Lopez, invited paper, Twenty-Fourth Annual Conference, Michigan State University Institute of Public Utilities, Williamsburg, Virginia, December 8, 1992; forthcoming in *MSU Public Utility Conference Proceedings*, 1993.

"R&D Expenditures by the Bell Operating Companies: A Comparative Assessment," invited paper, Twenty-Third Annual Conference, Michigan State University Institute of Public Utilities, Williamsburg, Virginia, December 9, 1991; forthcoming in *MSU Public Utility Conference Proceedings*, 1993.

"Strategic Uses of Regulation: The Case of Line-of-Business Restrictions in Communications," with Robert A. Blau, presented to Academy of Management, Miami, FL, August 14, 1991; *Research in Corporate Social Performance and Policy*, James E. Post (ed.), JAI Press, 1992.

"Structural Adjustment Through Industry Deregulation: The U.S. Experience in Telecommunications and Transportation," invited paper, Pacific Economic Cooperation Conference on Structural Adjustment, Kyoto, Japan, October 11, 1990; published in *PECC Conference Proceedings*, 1991.

"Gaining Competitive Advantage through Strategic Public Policies: The Case of Japanese Telecommunications," invited lecture, National Economists Club, Washington, D.C., June 1988; published in *Economics and the Public Interest*, Richard T. Gill (ed.); Mayfield Publishing: Mountain View, CA, 1991.

"The Political Economy of Regulation: Analysis of Market Failures and Regulatory Responses," with James A. Carman, *Scaling the Corporate Wall: Readings in Social Issues of the Nineties*, S. Prakash Sethi, Paul Steidlmeier and Cecilia M. Falbe (eds.); Prentice-Hall: Englewood Cliffs, 1991.

"Telecommunications Services as a Strategic Industry: Implications for United States Policy," *Competition and the Regulation of Utilities*, Michael A. Crew (ed.), Kluwer Academic Publishers: Boston, 1990.

"Telecommunications as a Strategic Industry: Is There a Threat?" *Povernomics: Economics and Strategy After the Cold War*, Clyde V. Prestowitz, Jr., Ronald Morse and Alan Tonelson (eds.), University Press of America, 11. Reprinted from *Vital Speeches of the Day* LV(12), April 1989. Invited lecture, New York University Symposium on Telecommunications and Economic Development, December 1988.

"New Plans for Joint Ventures," with David C. Mowery, *The American Enterprise*, September/October 1990.

"Strategies for Innovation: An Overview," with David C. Mowery, *California Management Review* 32(3), Spring 1990, Co-Editor of Special Issue, "Strategies for Innovation."

"The Implications of Divestiture and Regulatory Policies for Research, Development and Innovation in the U.S. Telecommunications Industry," presented to Telecommunications Policy Research Conference, September 1988; *Telecommunications Policy*, April 1990.

"Telecommunications Policies in Japan: Lessons for the U.S.," presented to Advanced Workshop in Regulation and Public Utility Economics, Monterey, CA, July 1988; presented to Telecommunications Policy Research Conference, October 1988; *California Management Review* 31(3), Spring 1989.

"California Telecommunications Policy for the Twenty-First Century," *Report to the California Economic Development Corporation*, Sacramento, June 1988.

"A Qualitative Choice Analysis of Rail Routings: Implications for Vertical Foreclosure and Competition Policy," with Curtis A. Grimm, *The Logistics & Transportation Review*, March 1988.

"Horizontal Merger Policy: Promoting Competition and American Competitiveness," with Lawrence A. Sullivan, *Antitrust Bulletin*, January 1987.

"The Political Economy of Regulation," with James M. Carman, *Business & Society*, S.P. Sethi and C. Falbe (ed.), Lexington Books: Lexington, 1987.

"Public Regulation of Market Activity: Regulatory Failures," with James M. Carman, *Journal of Macromarketing*, Spring 1986.

"The Effects of Railroad Mergers on Industry Productivity and Performance," with Curtis M. Grimm, invited paper to Transportation Research Board, National Academy of Engineering, January 1986; *Transportation Research Record* 1029, 1986.

"Revitalization of the U.S. Freight Industry: An Organizational Perspective," with Curtis M. Grimm, *International Railway Economics*, K. Button & D. Pitfield (eds.); Croom: London, 1985.

"The Values of Economic Theory in Management Education," *The American Economic Association Papers & Proceedings* 74(2), May 1984.

"Public Regulation of Market Activity: Regulatory Responses," with James M. Carman, *Journal of Macromarketing*, Spring 1984.

"Antitrust Market Definition: An Integrated Approach," with Thomas M. Jorde, *California Law Review* 72(1), January 1984. Reprinted in *Corporate Counsel's Annual*, Matthew Bender, 1985.

"Structural Economics of the U.S. Rail Freight Industry: Concepts, Evidence and Merger Policy Implications," with Curtis M. Grimm, *Transportation Research* 17A(4), July 1983.

"Vertical Foreclosure in the Rail Freight Industry: Economic Analysis and Public Policy Prescriptions," with Curtis M. Grimm, *ICC Practitioners' Journal*, July 1983.

"Market Definition in the Merger Guidelines: Implications for Antitrust Enforcement," with Thomas M. Jorde, *California Law Review* 71(3), March 1983. Reprinted in *Antitrust Policy in Transition: The Convergence in Law and Economics*, Fox and Halverson (eds.), American Bar Association, 1984.

"Public Regulation of Market Activity: Institutional Typologies of Market Failures," with James M. Carman, *Journal of Macromarketing*, Spring 1983.

"Potential Benefits of Rail Mergers: An Econometric Analysis of Network Effects on Service Quality," with Clifford Winston, *Review of Economics and Statistics* 65(1), February 1983.

"Regulation: A Long Term Perspective," *Business Environment/Public Policy: The Field and Its Future*, Edwin M. Epstein and Lee E. Preston (eds.), St. Louis, 1982.

"The Financial Performance and Prospects of Railroads in the South and Southwest," with Curtis M. Grimm, *Texas Business Review*, November/December 1982.

"More on Passing On: A Reply to Cooter and to Viton and Winston," with Lawrence A. Sullivan, *Pennsylvania Law Review* 129:6, June 1981.

Rationalizing the Rail Freight System: Costs and Benefits of Branch Line Abandonments, U.S. Department of Transportation, Washington, D.C., 1981.

"Determinants of Railroad Profitability: An Econometric Study," with Theodore E. Keeler, *Economic Regulation: Essays in Honor of James R. Nelson*, William G. Shepherd and Kenneth D. Boyer (eds.), Michigan State University Press, 1981.

"Passing on the Monopoly Overcharge: A Response to Landes and Posner," with Lawrence A. Sullivan, *Pennsylvania Law Review* 128(5), May 1980.

"Suppliers of Last Resort: Economics of Self-Supply in Common Carrier Industries," with Robert A. Meyer, *Quarterly Review of Economics and Business* 19(4), Winter 1980.

"Economic Analysis of Light Density Rail Lines," *The Logistics and Transportation Review* 16(1), Winter 1980.

"Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis," with Lawrence A. Sullivan, *Pennsylvania Law Review* 128(2), December 1979.

"Rationalizing the Physical Structure of the U.S. Rail Freight Industry," *National Railroad Policy*, Joint Economic Committee, U.S. Congress, Washington, D.C., Government Printing Office, 1979.

"Simple Analytics of Rail Costs and Disinvestment Criteria," *Transportation Research Record* 687, 1978.

"Economics of Traffic Density in the Rail Freight Industry," *Bell Journal of Economics* 8(2), Autumn 1977.

RECENT PAPERS, REPORTS, PRESENTATIONS & PROFESSIONAL PROCEEDINGS

"Market Definition and Market Power in the Sports and Entertainment Industry," invited presentation, Antitrust Section, American Bar Association Annual Proceedings, San Francisco, August 1992.

"The Design of Incentive Regulation for Telecommunications," invited presentation, Conference on Alternative Regulation, Illinois Commerce Commission, Chicago, July 1992.

"The Effects of Public Policies on ISDN Deployment and Adoption in the U.S.," presented to International Telecommunications Society, Cannes, France, June 1992.

"Removing the MFJ Restriction on InterLATA Services," invited testimony, Subcommittee on Telecommunications & Finance, U.S. House of Representatives, Washington D.C., May 1992.

"The Implications of Telecommunications Infrastructure Investment for R&D, Innovation and Competitiveness," invited testimony, Subcommittee on Communications, U.S. Senate, Washington D.C., February 1992.

"Principles of Costing and Pricing for Telecommunications Regulatory Policy," invited testimony, Colorado Public Utilities Commission En Banc Hearing, Denver, February 1992.

"Deregulation and Interstate Bank Entry in California," with Lee Burke, Research Report of the California Policy Seminar, UC Berkeley, April 1991.

"Assessing the Future of Telecommunications in the Global Economy," invited address, California Telephone Association, Monterey, CA, February 1991.

"Economic Rationale for a National Fiber Optic Infrastructure," invited address, Congressional Staff Forum on Telecommunications (sponsored by Ameritech), Washington D.C., February 1991.

"Applications of Incentive Regulation: An International Comparison," invited presentation, Conference of California Public Utilities Counsel, Long Beach, CA, October 1990.

"The Role of Telecommunications in Regional Economic Development," invited address, Rocky Mountain State Leaders Conference, Billings, Montana, October 1990.

"Telecommunications and Public Policies in the Global Market," invited address, Carnegie Council, New York, NY, October 1990.

"Why We Need a National Telecommunications Policy: A Comparative Perspective," invited address, Policy Issues Management Conference, Bell Communications Research, Murray Hill, NJ, October 1990.

"Incentive Regulation for Telephone Utilities," invited presentation, Workshop of the Colorado Public Utilities Commission, Denver, September 1990.

"The Role of Telecommunications Policy," invited lecture, Conference on Economic Development in the Pacific Northwest, Portland, Oregon, September 1990.

"The Changing Economics of Telecommunications: Implications for U.S. Policy and Competitiveness," invited briefing of U.S. Congressional staff on telecommunications (sponsored by Pacific Telesis), San Francisco, August 1990.

"Communications Competitiveness and Infrastructure Modernization Act of 1990," invited testimony, Communications Subcommittee, U. S. Senate, Washington D.C., July 1990.

"Investing in America's Future," invited essay, 1989 Annual Report of Southwestern Bell Corporation, St. Louis, 1990.

"The Public Switched Telephone Network and Rural Economic Development," invited lecture, Montana State Leaders' Conference, Helena, April 1990.

"Is Public Policy Meeting the Needs of Consumers?" invited panelist, Conference on Telecommunications Technologies and Policies, Center for Communications and Information Science & Policy, University of Pennsylvania, March 1990.

"Telecommunications as a Strategic Industry," invited address, New England Council, Boston, February 1990.

"Fiber to the Customer: A Public Policy Perspective," invited paper, Western Communications Forum, San Diego, February 1990.

Session Chair and Moderator, "State Regulatory Reform: Recent and Future Trends," Fifth Conference on State Telecommunications Regulation, University of Utah, Salt Lake City, January 1990.

Invited Panelist, "Crossroads of Information Technology," Board on Telecommunications and Computer Applications, National Academy of Engineering, Washington D.C., October 1989

Invited panelist in the "Industry Forum," Annual Meeting of the U.S. Telephone Association, San Francisco, October 1989.

"Strategic Lessons from Deregulated Industries," paper presented to Strategic Management Society, San Francisco, October 1989.

"Deregulation in the Transportation Industries: Lessons for Telecommunications Managers," invited paper, Center for Telecommunications Management, University of Southern California, October 1989.

"Price Cap Regulation and Economic Forecasting," invited presentation to 1989 National Forecasting Conference, Bell Communications Research, San Francisco, May 1989.

"The Strategic Implications of Telecommunications Deregulation in Europe," invited presentation, Strategic Management Society, Amsterdam, October 1988.

"Telecommunications Deregulation: Implications for the California Economy," invited presentation, California Foundation for the Environment and the Economy, Carmel, June 1988.

"A Comparison of U.S. and Japanese Policies toward Information Technologies," invited presentation, International Public Economics Association, Tokyo, May 1988.

"Information Technologies, Public Policy, and Regional Economic Development," invited address, Conference on Regional Development in Japan, Hokkaido University, Sapporo, Japan, May 1988.

"The Implications of Line-of-Business Regulation for Diversification Strategy & Enterprise Structure," paper presented to Strategic Management Society, Boston, October 1987.

"Alternative Regulatory Frameworks for Local Exchange Carriers," invited presentation, En Banc Hearing of the California Public Utility Commission, September 1987.

"Emerging Telecommunications Policies in Europe," Briefing of California Legislative Leaders, Los Angeles, September 1987.

"Japanese Corporate Philanthropy in the United States," presented to Academy of Management, New Orleans, August 1987; Center for Research in Management Working Paper BPP-23; published in summary form in *Strategic Directions*, with Barbara Lombardo and David Vogel, April 1989.

"The Effects of Deregulation on Competition and Competition Policy in Banking: A Review of the Literature," Working Paper No. 4, National Center for Financial Services, Berkeley, August 1987.

"Competitive Strategies under Regulatory Constraint: Implications of the AT&T Divestiture on Vertical Relations in Telecommunications," with David J. Teece, paper presented to Strategic Management Society, Singapore, 1986.

"The Economic Consequences of Deregulation," invited address, Emerging Issues Program, Conference of National State Legislative Leaders, Los Angeles, September 1986.

"Public Policies toward Utility Diversification: An Overview," invited presentation, California Policy Seminar/California Senate Office of Research, Berkeley, April 1986.

"New Technologies for Local Loop Access: An Economic and Regulatory Analysis," with Gary Pisano, Office of Technology Assessment, United States Congress, June 1985.

"Corporate Community Involvement in the Greater San Francisco Bay Area," with D. Vogel and J. Logsdon, Center for Research in Management Working Paper, Berkeley, May 1985.

"The Future of Telecommunications Regulation," invited presentation, En Banc Hearing of the California Public Utilities Commission, San Francisco, November 1984.

"Testimony in Support The Taxpayer Antitrust Enforcement Act," Judiciary Committee, U.S. Senate, May 1984.

PROFESSIONAL AFFILIATIONS

American Economic Association
Academy of Management
Strategic Management Society
International Telecommunications Society
Association of Public Policy Analysis and Management

SERVICE TO PROFESSIONAL JOURNALS, SOCIETIES & PUBLIC AGENCIES

Governor's Ad Hoc Committee, Golden State Quality Awards (1991-92)
Chair, Ninth Annual International Conference of the Strategic Management Society,
October 1989, San Francisco (1987-89).
Associate Editor, *California Management Review*
Associate Editor, *Logistics and Transportation Review*
Editorial Advisory Board, Transportation Research
Session organizer: Telecommunications Policy Research Conference (1988, 1989); Academy of
Management (1991).
Reviewer/Referee: *Bell/RAND Journal of Economics*; *Industrial and Corporate Change*; *Journal of
Asian Economics*; *Journal of Economics and Business*; *Journal of Public Policy Analysis &
Management*; *Journal of Regulatory Economics*; *National Science Foundation*; *Quarterly
Review of Economics and Business*; *Review of Economics and Statistics*; *Telecommunications
Policy*.

CONSULTING & TESTIMONY

Economic Consulting to Public Agencies:

California Department of Consumer Affairs (industry analysis); California Office of Attorney
General (antitrust analysis in tire industry, merger analysis in food retailing industry, resale price
maintenance in consumer electronics, infant formula pricing); California Public Utilities
Commission (teach regulatory economics & policy to Commission staff); Interstate Commerce
Commission (rate regulatory policy, merger policy, costing methodology); Office of Technology
Assessment (telecommunications policy); U.S. Department of Transportation (railroad industry
rationalization, merger policy); U.S. General Accounting Office (transportation policy).

Economic Consulting/Regulatory Expert Testimony to Private Enterprise:

Pacific Bell (pricing, competitive strategy, regulatory policy, broadband deployment); US WEST
(regulatory policy, costing and pricing principles); Ameritech Corporation (development of price
regulatory framework); General Telephone (pricing, regulatory policy); Western Coal Traffic
League (railroad pricing); Consolidated Freightways (motor carrier pricing); Southern Pacific
Transportation Co. (competition policy); American Presidents Intermodal Co. (competition policy);
Bell Communications Research (R&D policy analysis); Bell Atlantic (regulatory framework, MFI
waiver).

Economic Consulting/Business Litigation Expert Witness Testimony:

Electrical contracting; biotechnology manufacturing equipment; pipe fabrication; vision care services; electronic lighting ballasts; motion picture production, distribution and exhibition; regional shopping center development, semiconductor manufacturing equipment; digital-analog converters; workmen's compensation insurance; semiconductor manufacturing.

PRIOR/OTHER EMPLOYMENT

Deputy Director, Cost, Economic and Financial Analysis, Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. (on leave, University of California); (1980-81).
Director, ARTRAIN (traveling art education exhibit), Michigan Council for the Arts, Detroit, (1971-72).
President, Young American Corporation (direct marketing of specialty products), St. Louis (1969-71).
Public Relations Consultant (TIME, Inc.; Rockefeller for President Committee; Young Citizens for Humphrey-Muskie; Student Coalition for Congressional Action), New York and Washington D.C. (1967-69).
Vice President, National Student Marketing Corporation, Washington D.C. (1966-67).
Staff Assistant, Office of the Governor, State of Oregon, Salem (1966).
Public Relations Field Representative, General Motors Corporation, Warren, Michigan (1965).

January 1994

TAB 2

DOCKET FILE COPY DUPLICATE

RECEIVED

APR - 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendments of Parts 32, 36, 61,) RM-
64 and 69 of the Commission's Rules)
to Establish and Implement Regulatory)
Procedures for Video Dialtone Service)

JOINT PETITION FOR RULEMAKING AND
REQUEST FOR ESTABLISHMENT OF A JOINT BOARD

CONSUMER FEDERATION OF AMERICA

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April 8, 1993

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RECEIVED

APR - 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendments of Parts 32, 36, 61,
64 and 69 of the Commission's Rules
to Establish and Implement Regulatory
Procedures for Video Dialtone Service

RM-

JOINT PETITION FOR RULEMAKING AND
REQUEST FOR ESTABLISHMENT OF A JOINT BOARD

Consumer Federation of America^{1/} and the National Cable Television Association,^{2/} by their attorneys and pursuant to Section 1.401 and Parts 32, 36, 61, 64 and 69 of the Commission's rules, and Section 410(c) of the Communications Act of 1934, as amended, hereby petition for the commencement of a rulemaking to establish cost allocation rules for video dialtone service, and for the establishment of a Federal-State Joint Board to recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone.

^{1/} Consumer Federation of America (CFA) is the nation's largest consumer advocacy group, composed of over 240 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members. As ratepayers, CFA's members have a direct interest in the outcome of this proceeding.

^{2/} The National Cable Television Association (NCTA) is the principal trade association of the cable television industry. Its members provide cable television services to approximately 90 percent of the nation's cable television subscribers. NCTA's members have a direct interest in the outcome of this proceeding.

INTRODUCTION AND SUMMARY

When the Commission authorized local telephone companies to offer video dialtone service,^{3/} it left critical implementation issues unresolved. Rather than adopt comprehensive video dialtone-specific rules to govern such matters as jurisdictional separations, cost allocation, pricing, and consumer safeguards, the Commission apparently believed that it could address these issues as they arose, in the context of applications for authorization to construct video dialtone facilities.

It is clear now, however, that this ad hoc approach will not work. Pending before the Commission are three video dialtone applications^{4/} that, if granted, would force basic ratepayers in just the three affected service areas to bear the costs of millions of dollars in fiber optic lines being installed for video services and would undermine fair competition in the video

^{3/} See Telephone Company/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd. 5781 (1992) ("Video Dialtone Order"). The Video Dialtone Order expanded the role of local exchange carriers in the video marketplace by authorizing them to construct a basic common carrier platform for video programmers and to offer enhanced services to unaffiliated program suppliers. Carriers must provide access to the platform on non-discriminatory terms and conditions.

^{4/} A fourth application, for a video dialtone trial, was recently approved by the Commission. The Commission there held that accounting of only direct incremental costs incurred in the provision of the basic video dialtone was acceptable, but only because the application involved a technical trial of video dialtone rather than a full-scale offering of video dialtone service. Thus, the Commission's approval of that trial does not resolve the broader cost allocation issues raised in this Joint Petition.

marketplace. A careful analysis of these applications highlight the risks to consumers and competition:

- New Jersey Bell proposes to assign one hundred percent of the costs of new fiber trunks to telephone ratepayers -- even though it is crystal clear that only a small fraction of these new facilities will be used for telephone service. The overwhelming proportion of this capacity will be used for video dialtone service.

- According to a new study by Hatfield Associates, appended to this Joint Petition, telephone ratepayers nationwide could pay billions of dollars in unjustified rate increases each year unless effective cost allocation rules are implemented.^{5/}

- The pending applications demonstrate that the threat of cross-subsidy remains alive and well with respect to video dialtone offerings, notwithstanding earlier speculation that existing regulatory safeguards and the purportedly eroding monopoly power of local exchange carriers had reduced that threat.^{6/}

The manifest flaws in the pending applications are a direct result of the lack of cost allocation rules for video dialtone. In the absence of a clear set of standards to ensure that ratepayers do not subsidize the substantial costs of constructing and operating video dialtone facilities, there will doubtless be more applications that attempt to exploit this gaping hole in the regulatory scheme. Safeguards developed on a case-by-case basis in reaction to flawed applications cannot effectively address

^{5/} Hatfield Associates, CROSS-SUBSIDY CONCERNS RAISED BY LOCAL EXCHANGE CARRIER PROVISION OF VIDEO DIALTONE SERVICES (Mar. 29, 1993), at 28-30 (attached hereto as Appendix A).

^{6/} See New Jersey Cable Television Association Reply to Opposition to Petition to Deny, File No. W-P-C-6840 (Filed Feb. 12, 1993), App. A (Affidavit of Leland L. Johnson) at 2-3 ("Johnson Affidavit").

what is clearly a generic problem, and the process of developing conditions for each new application will consume substantial governmental and private resources.

The Commission itself recognized that the applications review process might not be the best forum for dealing with these matters. It is past time to institute a comprehensive proceeding to address questions with respect to jurisdictional separations, cost accounting, access charges, and other consumer and competitive safeguards in the video dialtone context.

Specifically:

- The Commission should establish a Federal-State Joint Board to recommend the proper allocation of plant used jointly for telephone and video transmission services.
- The Commission should adopt video dialtone-specific cost accounting rules to safeguard consumers and ensure fair competition.
- The Commission must determine the proper application of its access charge and price cap rules to video dialtone.
- The Commission should adopt procedures for separating the costs of regulated and non-regulated video dialtone services.
- The Commission should adopt video dialtone-specific rules for joint marketing and customer privacy.

The rules developed in the proceeding we propose will provide needed guidance to local exchange carriers that wish to offer video dialtone services, and to state regulators, consumer advocates, and others whose interest is in seeing that the implementation of video dialtone does not come at the expense of

basic ratepayers or fair competition in the video marketplace.

Until completion of the rulemaking we seek, pending video dialtone applications should be held in abeyance and the Commission should refrain from accepting any new video dialtone applications. At a minimum, approval of any video dialtone application prior to the adoption of the basic safeguards we are requesting should be conditioned on compliance with those safeguards.^{1/}

I. IN VIEW OF THE PENDING APPLICATIONS TO PROVIDE VIDEO DIALTONE, THE COMMISSION MUST ACT PROMPTLY TO ESTABLISH RULES FOR SEPARATIONS, COST ACCOUNTING AND COST ALLOCATION

While the Commission itself originally sought comment on the need for changes in Parts 32, 36, 64, and 69 of its rules to implement video dialtone,^{8/} it ultimately chose not to make those changes. Numerous parties in the cable-telephone cross-ownership proceeding have taken issue with the Commission's failure to establish rules to govern such matters as jurisdictional separations and cost allocation at the same time as it authorized the provision of video dialtone services.^{2/}

^{1/} A video dialtone offering approved prior to the adoption of the safeguards would be subject to a retroactive reallocation of costs, if such a reallocation is necessary to bring the offering into compliance with the safeguards.

^{8/} Telephone Company-Cable Television Cross-Ownership Rules, Further Notice of Proposed Rulemaking, 7 FCC Rcd. 300, 321 (1991).

^{2/} Many of the parties who supported the adoption of video dialtone-specific safeguards have sought reconsideration of the Video Dialtone Order. See, e.g., Petition for Reconsideration of National Cable Television Association, Inc. (filed Oct. 9, 1992) at 7-9; Petition for Reconsideration of Consumer Federation of America (continued...)

Unless and until the Commission addresses these matters, video dialtone will remain very much a regulatory work in progress.

The filing of video dialtone applications by several local exchange carriers^{10/} has transformed theoretical controversies over separations and costing into matters that require immediate attention. The seriousness of the flaws in these applications

2/ (...continued)

and Center for Media Education (filed Oct. 9, 1992) at 24-32; Petition for Reconsideration of The National Association of Regulatory Utility Commissioners (filed Oct. 9, 1992) at 11-12; Petition for Reconsideration of The Pennsylvania Public Utility Commission (filed Oct. 9, 1992) at 7-13. While this petition for rulemaking seeks a result similar to the relief requested in the pending petitions for reconsideration, the instant petition is timely and appropriate because it presents new evidence for the adoption of video dialtone-specific rules and safeguards not available at the time for seeking reconsideration. Cf. 47 C.F.R. § 1.401 (imposing no time limitations on the filing of petitions for rulemaking).

10/ Application of New York Telephone Company, File No. W-P-C-6836 (filed Oct. 30, 1992) ("NYT Application"); Application of New Jersey Bell Telephone Company (Florham System), File No. W-P-C-6838 (filed Nov. 16, 1992) ("NJ Bell Florham Application"); Application of New Jersey Bell Telephone Company (Dover System), File No. W-P-C-6840 (filed Dec. 15, 1992) ("NJ Bell Dover Application"). In addition to these applications, U S West has reportedly announced plans to construct video dialtone systems throughout its service territory. See "U S West Announces Plan to Deploy Broadband Network Across Its Service Territory," Telecommunications Reports, Feb. 8, 1993, at 6-8.

The Commission recently granted a fourth application for a video dialtone trial. Application of Chesapeake and Potomac Telephone Company of Virginia, FCC 93-160 (rel. Mar. 25, 1993) ("C&P Order"). While the Commission there approved the carrier's accounting of only incremental costs incurred in the provision of the basic video dialtone platform, its decision was based on its finding that the application proposed "a limited trial involving relatively small costs." C&P Order at ¶ 13. Thus, by its own terms, the Commission's approval of this trial in no way resolves the broader cost allocation issues raised in this Joint Petition.